

E-FILED 6/3/2009

NOT FOR CITATION

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

REYNA NAREZ and AURELIO L. VASQUEZ,

No. C09-00090 HRL

Plaintiffs,

**ORDER THAT CASE BE REASSIGNED
TO A DISTRICT COURT JUDGE**

v.

NDEX WEST LLC; CHASE HOME FINANCE,
LLC; and DOES 1-50,**REPORT AND RECOMMENDATION**

Defendants.

On December 9, 2008, plaintiffs filed the instant action in the Superior Court for the County of Monterey. On January 8, 2009, defendant Chase Home Finance LLC ("Chase") removed the matter to this court, asserting federal question jurisdiction.¹ On January 15, 2009, Chase filed a motion to dismiss, with a noticed hearing date of March 3, 2009 (Docket #5). On this court's own motion, the hearing was continued to April 14, 2009, pending the receipt of the parties' consent to proceed before a magistrate judge. (Docket #8). Pursuant to Civil Local Rule 7, plaintiffs' opposition or statement of non-opposition was due by March 24, 2009. However, they failed to file any opposition. Additionally, on April 15, 2009, this court ordered plaintiffs to either consent or decline magistrate judge jurisdiction by April 24, 2009. (Docket #12). They failed to comply with this deadline.

¹ Chase represented to the court that defendant NDEx West LLC consented to the removal. NDEx West LLC has not appeared here.

1 In view of plaintiffs' inaction, this court vacated the May 5, 2009 case management
2 conference and ordered plaintiffs to show cause why this case should not be dismissed for
3 failure to prosecute and to comply with court deadlines. Plaintiffs were ordered to file a
4 response to the order to show cause by May 26, 2009, and a show cause hearing was set for
5 June 2, 2009. (Docket #13).

6 This court held a show cause hearing on June 2, 2009. Plaintiffs failed to appear at the
7 hearing and failed to file any response. Based on information found on the California State
8 Bar's website (www.calbar.ca.gov), this court is informed that plaintiffs' counsel of record is no
9 longer eligible to practice law and that his law license was ordered inactive on April 25, 2009.

10 Based on the foregoing, this court finds it appropriate to dismiss this action pursuant to
11 Federal Rule of Civil Procedure 41(b). Because plaintiffs have yet to consent to the
12 undersigned's jurisdiction, this court ORDERS the Clerk of the Court to reassign this case to a
13 District Court judge. The undersigned RECOMMENDS that the newly-assigned judge dismiss
14 this case for failure to prosecute and failure to comply with the court's deadlines and orders.

15 Pursuant to Federal Rule of Civil Procedure 72, any party may serve and file objections
16 to this Report and Recommendation within 10 days after being served.

17 Dated: June 3, 2009

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20 HOWARD R. LLOYD
21 UNITED STATES MAGISTRATE JUDGE
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5:09-cv-90 Notice has been electronically mailed to:

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Counsel are responsible for distributing copies of this document to co-counsel who have not registered for e-filing under the court's CM/ECF program.